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10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA
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13 UNITED STATES OF AMERICA,) 3:05-cr-00098-HDM
14 Plaintiff/Respondent,) 3:10-cv-00531-HDM
15 vs.) ORDER
16 JOHNATHON ROBERTS,)
17 Defendant/Petitioner.)
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19 Before the court is a supplement to the defendant's 28 U.S.C.
20 § 2255 petition dated April 11, 2012 (#447), which was received by
21 the court and filed on the docket on April 23, 2012. While the
22 court has granted the defendant leave to request leave to file a
23 supplement, it has not granted defendant leave to file another
24 supplement. Instead, the court has stated that it would review any
25 supplement filed by the defendant and then decide whether leave to
26 file such should be granted. Accordingly, the court construes the
27 April 11, 2012, supplement as a request to file a supplement, and
28 for the reasons that follow, denies the request (#447).

1 The April 11, 2012, supplement deals entirely with defendant's
2 claim that his attorneys Marc Picker and Loren Graham rendered
3 ineffective assistance of counsel with respect to defendant's
4 speedy trial rights. For the first time, defendant argues that an
5 intervening change in the law supports his right to raise the
6 speedy trial claim in his § 2255 petition.

7 A defendant is not precluded from asserting in a § 2255 motion
8 a claim decided against him on direct appeal where there has been
9 an "intervening change in the law," *Davis v. United States*, 417
10 U.S. 333, 343 (1974). The "intervening change in the law"
11 defendant cites, however, consists of a 2006 Supreme Court case and
12 three Tenth Circuit cases from 2007, 2009, and 2010. The 2006
13 Supreme Court decision is not an "intervening change in the law" as
14 it existed at the time the Ninth Circuit Court of Appeals decided
15 defendant's direct appeal on March 20, 2009. Nor do the Tenth
16 Circuit opinions constitute an "intervening change in the law" as
17 they are not binding on either this court or the Ninth Circuit
18 Court of Appeals. Accordingly, as these cases have no effect on
19 the consideration of defendant's § 2255 petition, and in particular
20 his speedy trial claims, there is no basis for allowing
21 supplementation in this regard.¹

22 The remainder of defendant's supplement is devoted to
23 repeating the same arguments he has already asserted in his several
24 briefs filed with this court or raising for the first time
25 additional factual and legal arguments that could have been

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27 ¹ The court does not, by way of this order, render any decision on
28 defendant's speedy trial claim. The court decides only that nothing in
defendant's supplement is relevant or necessary to determining that claim
and that there is therefore no basis for allowing further supplementation.

1 included in one of those earlier briefs. Accordingly, the
2 defendant's request to supplement (#447) is hereby **DENIED**.

3 IT IS SO ORDERED.

4 DATED: This 30th day of April, 2012.

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7 UNITED STATES DISTRICT JUDGE
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